

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES
(Attorney Docket № 14282US02)**

In the Application of:

Jeyhan Karaoguz, et al.

Serial № 10/675,654

Filed: September 30, 2003

For: MIGRATION OF STORED MEDIA
THROUGH A MEDIA EXCHANGE
NETWORK

Examiner: Scott B. Christensen

Group Art Unit: 2444

Confirmation № 5801

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APPEAL BRIEF

Mail Stop Appeal Brief – Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is an appeal from an Office Action dated July 16, 2009 ("Final Office Action"), in which claims 1-42 were finally rejected. The Appellant respectfully requests that the Board of Patent Appeals and Interferences ("Board") reverses the final rejection of claims 1-42 of the present application. The Appellant notes that this Appeal Brief is timely filed within the period for reply that ends on February 25, 2010.

REAL PARTY IN INTEREST
(37 C.F.R. § 41.37(c)(1)(i))

Broadcom Corporation, a corporation organized under the laws of the state of California, and having a place of business at 5300 California Avenue, Irvine, California 92617, has acquired the entire right, title and interest in and to the invention, the application, and any and all patents to be obtained therefor, as set forth in the Assignment recorded at Reel 014252, Frame 0796 in the PTO Assignment Search room.

RELATED APPEALS AND INTERFERENCES
(37 C.F.R. § 41.37(c)(1)(ii))

The Appellant is unaware of any related appeals or interferences.

STATUS OF THE CLAIMS
(37 C.F.R. § 41.37(c)(1)(iii))

The present application includes pending claims 1-42, all of which stand rejected under 35 U.S.C. § 103(a). See the Final Office Action at page 6. The Appellant identifies claims 1-42 as the claims that are being appealed. The text of the pending claims is provided in the Claims Appendix.

STATUS OF AMENDMENTS
(37 C.F.R. § 41.37(c)(1)(iv))

The Appellant has not amended any claims subsequent to the final rejection of claims 1-42 mailed on September 15, 2009.

SUMMARY OF CLAIMED SUBJECT MATTER
(37 C.F.R. § 41.37(c)(1)(v))

Independent claim 1 recites the following:

A method for communicating information in a distributed network, the method comprising:

automatically and without user intervention, initiating detection and detecting whether one or more of new media, data and/or service becomes newly available within the distributed network¹;

migrating said newly available one or more of new media, data and/or service to at least a first media processing system within the distributed media network²; and

storing said migrated newly available one or more of new media, data and/or service at said at least a first media processing system³.

Independent claim 11 recites the following:

A machine-readable storage having stored thereon, a computer program having at least one code section for communicating information in a distributed media network, the at least one code section being executable by a machine for causing the machine to perform steps comprising⁴:

¹ See present specification at, e.g., page 4, lines 2-5; Fig. 1 (media peripheral 109 and MPS 101), Fig. 2 (step 201), page 13, lines 7-20.

² See *id.* at, e.g., page 4, lines 5-6; step 202 in Fig. 2; page 13, lines 7-20.

³ See *id.* at, e.g., page 4, lines 6-7; step 203 in Fig. 2; page 13, lines 7-20.

⁴ See *id.* at, e.g., page 4, lines 23-26.

automatically and without user intervention, initiating detection and detecting whether one or more of new media, data and/or service becomes newly available within the distributed network⁵;

migrating said newly available one or more of new media, data and/or service to at least a first media processing system within the distributed media network⁶; and

storing said migrated newly available one or more of new media, data and/or service at said at least a first media processing system⁷.

Independent claim 21 recites the following:

A system for communicating information in a distributed media network, the system comprising:

at least one processor that is operable to, automatically and without user intervention, initiate detection and detect whether one or more of new media, data and/or service becomes newly available within the distributed network⁸;

said at least one processor is operable to migrate said newly available one or more of new media, data and/or service to at least a first media processing system within the distributed media network⁹; and

⁵ See *id.* at, e.g., page 4, lines 2-5; Fig. 1 (media peripheral 109 and MPS 101), Fig. 2 (step 201), page 13, lines 7-20.

⁶ See *id.* at, e.g., page 4, lines 5-6; step 202 in Fig. 2; page 13, lines 7-20.

⁷ See *id.* at, e.g., page 4, lines 6-7; step 203 in Fig. 2; page 13, lines 7-20.

⁸ See *id.* at, e.g., page 5, lines 1-3; Fig. 1 (media peripheral 109 and MPS 101), Fig. 2 (step 201), page 13, lines 7-20.

⁹ See *id.* at, e.g., page 5, lines 3-5; step 202 in Fig. 2; page 13, lines 7-20.

a local storage operable to store said migrated newly available one or more of new media, data and/or service at said at least a first media processing system¹⁰.

Independent claim 32 recites the following:

A system for communicating information in a distributed media network, the system comprising:

at least one processor operable to, automatically and without user intervention, initiate detection and detect whether one or more of new media, data and/or service becomes newly available within the distributed network¹¹;

said at least one processor is operable to migrate said newly available one or more of new media, data and/or service to at least a first media processing system within the distributed media network¹²; and

said at least one processor is operable to cause storage of said migrated newly available one or more of new media, data and/or service in a local storage associated with said at least a first media processing system¹³.

¹⁰ See *id.* at, e.g., page 5, lines 3-5; Fig. 1 (local storage 114); step 203 in Fig. 2; page 13, lines 7-20.

¹¹ See *id.* at, e.g., page 5, lines 1-3; Fig. 1 (media peripheral 109 and MPS 101), Fig. 2 (step 201), page 13, lines 7-20.

¹² See *id.* at, e.g., page 5, lines 3-5; step 202 in Fig. 2; page 13, lines 7-20.

¹³ See *id.* at, e.g., page 5, lines 3-5; Fig. 1 (local storage 114); step 203 in Fig. 2; page 13, lines 7-20.

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL
(37 C.F.R. § 41.37(c)(1)(vi))

Claims 1-4, 7-14, 17-24 and 27-42 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over “The Gnutella Protocol Specification v0.4” (“Gnutella”) in view of USP 5,526,358 (“Gregerson”). Claims 5-6, 15-16 and 25-26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Gnutella in view of Gregerson, and further in view of USPP 2002/0194309 (“Carter”).

ARGUMENT
(37 C.F.R. § 41.37(c)(1)(vii))

In the Final Office Action, claims 1-4, 7-14, 17-24 and 27-42 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over “The Gnutella Protocol Specification v0.4” (“Gnutella”) in view of USP 5,526,358 (“Gregerson”). Claims 5-6, 15-16 and 25-26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Gnutella in view of Gregerson, and further in view of USPP 2002/0194309 (“Carter”).

I. The Proposed Combination of Gnutella and Gregerson Does Not Render Claims 1-4, 7-14, 17-24, 27-35, and 38-42 Unpatentable

A. Independent Claims 1, 11, 21 and 32

With regard to the rejection of independent claim 1 under 35 U.S.C. § 103(a), the Appellant submits that the combination of Gnutella and Gregerson does not disclose or suggest at least the limitation of “automatically and without user intervention, initiating detection and detecting whether one or more of new media, data and/or service becomes newly available within the distributed network,” as recited by the Appellant in independent claim 1.

The Final Office Action states the following:

With regard to claim 1, Gnutella discloses a method for communicating information in a distributed media network, the method comprising:

automatically detecting initiating detecting and detecting whether one or more of new media, data and/or service within the distributed network is available (Gnutella: Page 1, "Query". The "Query" descriptor is used for finding media that is available on the network. Further, the actual act of detecting is performed automatically. Even if the user initiates the act of

detecting with a query, the act itself is performed automatically and without user intervention.);

migrating said newly available one or more of new media, data and/or service to at least a first media processing system with the distributed media network (Gnutella: Page 1, "Push". "migrating" is interpreted as being equivalent to transfer (See specification paragraph [0011], where transfer and migrate seem to be interchangeable).); and

storing said migrated newly available one or more of new media, data and/or service at said least a first media processing system (Gnutella: Page 7. The file is downloaded, which means that the file is stored at the destination.).

Gnutella does not disclose expressly initiating detecting without user intervention whether the one or more of new media, data, and/or service becomes newly available.

However, persistent query's, such as that disclosed in Gregerson, are very well known in the art. In Gregerson, a "Persistent Find Query" is utilized to detect the availability of a resource as soon as it is available in the network (Gregerson: Column 12, lines 29-41). For a persistent query, a user initiates the initial query. If the item being searched for is not found, the system automatically, and without user intervention, searches for the item again after some interval or in a continuous fashion. Thus, any new items would be discovered when the search executes after the new item appears in the system.

Thus, it would have been obvious to modify the teachings of Gnutella with persistent queries, such as that in Gregerson.

See Office Action at pages 6-8 (emphasis added). The Final Office Action continues to rely for support on Gnutella's Query descriptor. The Appellant points out that the Query descriptor of the Gnutella protocol is used only **by a user** for purposes of searching a local data set by the servant that receives the Query descriptor. See Gnutella at page 1. More specifically, **the Query descriptor is used to locate a match (and a QueryHit) against existing data within the local data set of the specific servant.**

The Query descriptor, as well as any of the remaining Gnutella descriptors, is not

used (and cannot be used) for purposes of initiating detection and detecting whether media, data, and/or service become newly available.

Furthermore, a user has to specifically designate the search criteria (or the search string) for purposes of using the Query descriptor. In other words, the Query descriptor, as well as any other descriptor of the Gnutella protocol, requires user participation (the user has to initiate the query) and, therefore, cannot be used for purposes of “automatically and without user intervention, initiating detection and detecting” newly available media. Obviously, Gnutella requires the user to initiate the detection, and no detection can be performed without such user intervention.

The Examiner, in the above citation, concedes the following:

Gnutella does not disclose expressly initiating detecting without user intervention whether the one or more of new media, data, and/or service becomes newly available.

See the Final Office Action at page 7. The Examiner then relies for support on col. 12, lines 29-41 of Gregerson, which describes the “persistent query.” The Appellant is not certain why the Examiner is using Gregerson since its “persistent query” (similarly to Gnutella’s Query) is initiated by the user. In fact, the Examiner concedes that for a persistent query, “a user initiates the initial query”. See Final Office Action at page 7. Obviously, without the user initiating the query process, there will be no detection taking place under both Gnutella and Gregerson.

Therefore, the Appellant maintains that the combination of Gnutella and Gregerson does not (and cannot) disclose or suggest at least the limitation of “automatically and without user intervention, initiating detection and detecting whether one or more of new media, data and/or service becomes newly available within the distributed network,” as recited by the Appellant in independent claim 1.

Accordingly, the proposed combination of Gnutella and Gregerson does not render independent claim 1 unpatentable, and a *prima facie* case of obviousness has not been established. The Appellant submits that claim 1 is allowable. Independent claims 11, 21 and 32 are similar in many respects to the method disclosed in independent claim 1, and these claims were rejected based on the same rationale as in claim 1. Therefore, the Appellant submits that independent claims 11, 21 and 32 are also allowable over the references cited in the Office Action at least for the reasons stated above with regard to claim 1.

B. Examiner’s Response to Arguments in the Advisory Office Action

The Examiner states the following in the Advisory Office Action:

It is noted that the instant claim only requires that the initiation of the detection is without user intervention, but provides no detail on how the detection is initiated. (1)

In the case of the instant rejection, the rejection relies on the concept of a "persistent query." A persistent query, as recognized by a person of ordinary skill in the art, is one where a query is initiated in such a way as to periodically execute the query. While the persistent query, itself, may be initiated by a user, each subsequent execution of the query is performed "automatically and without user intervention" until a certain condition is

met to halt the persistent query, which may include a certain amount of time passing, or the item being found. **(2)**

Thus, in the instant rejection, while the persistent query, itself, is user initiated, each execution of the persistent query after it is initiated is not user initiated, but rather is initiated automatically and without user intervention, where each execution of the persistent query results in the initiation of the detection and the detecting of the media, data, and/or service. **(3)**

The Applicant respectfully disagrees (emphasis and numbering added).

With regard to Examiner's argument **(1)**, the Applicant points out that claim 1 indeed provides sufficient details on how the detection is initiated. Namely, such **detection is initiated automatically and without user intervention**, which is **not** disclosed by the references, as explained below. In fact, **the Examiner has even conceded that Gnutella's persistent query is initiated by a user** (see underlining in argument **(2)** above).

In reference to Examiner's arguments **(2)** and **(3)** above, the Applicant points out that **how "each subsequent execution of the query is performed"** is **irrelevant** in these circumstances. **The issue here is how the query is initiated, not how it is subsequently performed after its initiation.** Applicant's claim 1 clearly recites how detection is initiated (i.e., automatically and without user intervention), and such features are not disclosed by the reference (as also conceded to by the Examiner).

C. Rejection of Dependent Claims 2, 12, 22, and 33

Claims 2, 12, 22, and 33 depend on independent claims 1, 11, 21, and 32, respectively. Therefore, the Appellant submits that claims 2, 12, 22, and 33 are allowable over the references cited in the Final Office Action at least for the reasons stated above with regard to claim 1. The Appellant also submits that Gnutella does not disclose or suggest at least the limitation of "determining whether said stored migrated newly available one or more of new media, data and/or service should be processed," as recited by the Appellant in claim 2.

With regard to claim 2, the Final Office Action states the following at pages 8-9:

With regard to claim 2, Gnutella as modified by Gregerson teaches the invention as substantially claimed except determining whether said stored migrated newly available one or more of new media, data and/or service should be processed.

However, Official Notice (See MPEP §2144.03) is taken that this functionality is very well known in the art.

The Appellant is entitled to traverse any/all Official Notice taken in this action according to MPEP §2144.03. However, MPEP §2144.03 further states "See also In re Boon, 439 F.2d 724, 169 USPQ 231 (CCPA 1971) (a challenge to the taking of judicial notice must contain adequate information or argument to create on its face a reasonable doubt regarding the circumstances justifying the judicial notice)."

Specifically, In re Boon, 169 USPQ 231, 234 states "as we held in Alhert, an Appellant must be given the opportunity to challenge either the correctness of the fact asserted or the notoriety or repute of the reference cited in support of this assertion. We did not mean to imply by this statement that a bald challenge, with nothing more, would be all that was needed." Further note that 37 CFR §1.67(c)(3) states "Judicial notice means official notice." Thus, a traversal by the Appellant that is merely "a bald challenge, with nothing more" will be given very little weight.

It would have been obvious to determine whether said stored migrated newly available one or more of new media, data and/or service should be processed.

According to MPEP § 2144.03(A), Official Notice, without supporting references, should only be asserted when the subjects asserted to be common knowledge are “capable of instant and unquestionable demonstration as being well-known.” **The fact that all the prior art references produced by the Examiner’s search do not disclose or suggest the features subject to official notice, is evidence that these features are not common knowledge. Therefore, the Examiner cannot take Official Notice without providing supporting evidence, as required by MPEP.**

Furthermore, the Examiner has provided the following reasoning that the features subject to official notice are “capable of instant and unquestionable demonstration as being well-known”:

The suggestion/motivation for doing so would have been that when a file is downloaded, the user should be able to decide whether the file will be processed or not. For example, if a user downloads a song, the user should be able to then determine if the song will actually be played (which would be processing the song's file) or just stored. This allows a user who is downloading many files or downloading larger files to determine when the file will actually be processed, and further allows security software operations (i.e. virus scan) to be performed on the file prior to processing the file.

See the Final Office Action at page 9. The Applicant respectfully disagrees with the above reasoning. **It is not necessarily true that “when a file is downloaded, the user should be able to decide whether the file will be processed or not.” More often than not, such determination is not necessary when the file is downloaded.**

For example, a user may initiate a download of newly available media at a personal media device. The personal device may be set to record only certain number of newly available downloads. The user does not need to decide, upon the media download, how such media will be processed. Instead, the newly available media is simply being saved and a determination of whether to process the media (e.g., view it) or not (e.g., delete it) is made at a later time. Therefore, the features subject to Examiner's official notice are not "capable of instant and unquestionable demonstration as being well-known."

In this regard, the Appellant has specifically pointed out (for at least one scenario stated above) how the noticed facts would not be considered to be well known in the art. Therefore, the Applicant maintains the previous traversal of Official Notice, which is summarized again herein below.

The Examiner has taken Official Notice with regard to Applicant's claims 2, 3, 8, and 10. See the Final Office Action at pages 4-8. More specifically, the Examiner is taking Official Notice with respect to the language of claim 2, which recites "determining whether said stored migrated newly available one or more of new media, data and/or service should be processed"; claim 3, which recites "if said stored migrated newly available one or more of new media, data and/or service is to be processed, migrating said stored migrated newly available one or more of new media, data and/or service into one or both of a media view and/or a channel view"; claim 8, which recites "scheduling said migration of said newly available one or more of new

media, data and/or service to one or both of said first media processing system and/or a second media processing system within the distributed media network”; and claim 10, which recites “archiving said stored newly available one or more of new media, data and/or service.”

Assuming the Office Action is asserting Official Notice that the subject of these statements is common knowledge, the Applicant respectfully traverses the perceived and explicit assertions as further set forth below. Alternatively, if the Office Action’s assertions are based on the personal knowledge of the Examiner, then under MPEP § 2144.03(C) and 37 C.F.R. § 1.104(d)(2), the assertions must be supported by an affidavit from the Examiner.

According to MPEP § 2144.03(A), Official Notice, without supporting references, should only be asserted when the subjects asserted to be common knowledge are “capable of instant and unquestionable demonstration as being well-known.” That is, the subjects asserted must be of “notorious character” under MPEP § 2144.03(A). However, the Applicants respectfully submit that the subject matter of the perceived and explicit assertions of Official Notice is not well-known in the art as evidenced by the searched and cited prior art. The Applicant respectfully submits that the Examiner has performed “a thorough search of the prior art,” as part of the Examiner’s obligation in examining the present application under MPEP § 904.02. Additionally, the Applicants respectfully submit that the Examiner’s searched and cited references found during the Examiner’s thorough and detailed search of the prior art are indicative of the

knowledge commonly held in the art. However, in the Examiner's thorough and detailed search of the relevant prior art, none of the prior art taught or suggested the subject matter of the perceived and explicit assertions of Official Notice. That is, the Examiner's thorough and detailed search of the prior art has failed to yield any mention of the limitations in claims 2, 3, 8, and 10, which the Office Action concedes are not explicitly found in Gnutella, and which the Examiner asserts are widely known in the art. The Applicant respectfully submits that if the subject matter of these assertions of Official Notice had been of "notorious character" and "capable of instant and unquestionable demonstration as being well-known" under MPEP § 2144.03(A), then the subject matter would have appeared to the Examiner during the Examiner's thorough and detailed search of the prior art.

If the Examiner had found any teaching of relevant subject matter, the Examiner would have been obligated to list the references teaching the relevant subject matter and make a rejection. Consequently, the Applicant respectfully submits that the prior art does not teach the subject matter of the perceived assertion of Official Notice and respectfully traverses the perceived assertion of Official Notice.

Claims 12, 22 and 33 are substantially similar to claim 2 and are, therefore, also allowable based on the above reasoning. The Appellant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 2, 12, 22 and 33.

D. Rejection of Dependent Claims 3, 13, 23, and 34

Claims 3, 13, 23, and 34 depend on independent claims 1, 11, 21, and 32, respectively. Therefore, the Appellant submits that claims 3, 13, 23, and 34 are allowable over the references cited in the Final Office Action at least for the reasons stated above with regard to claim 1.

The Examiner has taken Official Notice with regard to Applicant's claim 3. See the Final Office Action at page 10. Therefore, the Examiner is referred to section I-C above, where the Official Noticed is traversed.

Accordingly, the Appellant submits that claim 3 is allowable over the references cited in the Final Office Action at least for the above reasons. Claims 13, 23 and 34 are substantially similar to claim 3 and are, therefore, also allowable based on the above reasoning.

The Appellant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 3, 13, 23 and 34.

E. Rejection of Dependent Claims 4, 14, 24, and 35

Claims 4, 14, 24, and 35 depend on independent claims 1, 11, 21, and 32, respectively. Therefore, the Appellant submits that claims 4, 14, 24, and 35 are allowable over the references cited in the Final Office Action at least for the reasons stated above with regard to claim 1.

The Appellant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 4, 14, 24 and 35.

F. Rejection of Dependent Claims 7, 17, 27, and 38

Claims 7, 17, 27, and 38 depend on independent claims 1, 11, 21, and 32, respectively. Therefore, the Appellant submits that claims 7, 17, 27, and 38 are allowable over the references cited in the Final Office Action at least for the reasons stated above with regard to claim 1.

The Appellant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 7, 17, 27, and 38.

G. Rejection of Dependent Claims 8, 18, 28, and 39

Claims 8, 18, 28, and 39 depend on independent claims 1, 11, 21, and 32, respectively. Therefore, the Appellant submits that claims 8, 18, 28, and 39 are allowable over the references cited in the Final Office Action at least for the reasons stated above with regard to claim 1.

The Examiner has taken Official Notice with regard to Applicant's claim 8. See the Final Office Action at page 11. Therefore, the Examiner is referred to section I-C above, where the Official Noticed is traversed.

Accordingly, the Appellant submits that claim 8 is allowable over the references cited in the Final Office Action at least for the above reasons. Claims 18, 28, and 39 are substantially similar to claim 8 and are, therefore, also allowable based on the above reasoning.

The Appellant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 8, 18, 28, and 39.

H. Rejection of Dependent Claims 9, 19, 29, and 40

Claims 9, 19, 29, and 40 depend on independent claims 1, 11, 21, and 32, respectively. Therefore, the Appellant submits that claims 9, 19, 29, and 40 are allowable over the references cited in the Final Office Action at least for the reasons stated above with regard to claim 1.

The Appellant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 9, 19, 29, and 40.

I. Rejection of Dependent Claims 10, 20, 30, and 41

Claims 10, 20, 30, and 41 depend on independent claims 1, 11, 21, and 32, respectively. Therefore, the Appellant submits that claims 10, 20, 30, and 41 are allowable over the references cited in the Final Office Action at least for the reasons stated above with regard to claim 1.

The Examiner has taken Official Notice with regard to Applicant's claim 10. See the Final Office Action at page 11. Therefore, the Examiner is referred to section I-C above, where the Official Noticed is traversed.

Accordingly, the Appellant submits that claim 10 is allowable over the references cited in the Final Office Action at least for the above reasons. Claims 20, 30, and 41 are substantially similar to claim 10 and are, therefore, also allowable based on the above reasoning.

The Appellant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 10, 20, 30, and 41.

J. Rejection of Dependent Claims 31 and 42

Claims 31 and 42 depend on independent claims 21 and 32, respectively. Therefore, the Appellant submits that claims 31 and 42 are allowable over the references cited in the Final Office Action at least for the reasons stated above with regard to claim 21.

The Appellant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 31 and 42.

II. The Proposed Combination of Gnutella, Gregerson and Carter Does Not Render Claims 5-6, 15-16, 25-26, and 36-37 Unpatentable

A. Rejection of Dependent Claims 5, 15, 25, and 36

Claims 5, 15, 25, and 36 depend on independent claims 1, 11, 21, and 32, respectively. Therefore, the Appellant submits that claims 5, 15, 25, and 36 are allowable over the references cited in the Final Office Action at least for the reasons stated above with regard to claim 1.

The Appellant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 5, 15, 25 and 36.

B. Rejection of Dependent Claims 6, 16, 26, and 37

Claims 6, 16, 26, and 37 depend on independent claims 1, 11, 21, and 32, respectively. Therefore, the Appellant submits that claims 6, 16, 26, and 37 are allowable over the references cited in the Final Office Action at least for the reasons stated above with regard to claim 1.

The Appellant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 6, 16, 26 and 37.

CONCLUSION

For at least the foregoing reasons, the Appellant submits that claims 1-42 are in condition for allowance. Reversal of the Examiner's rejection and issuance of a patent on the application are therefore requested.

The Commissioner is hereby authorized to charge \$540 (to cover the Brief on Appeal Fee) and any additional fees or credit any overpayment to the deposit account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

Respectfully submitted,

Date: 01-MAR-2010

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(OIB)

CLAIMS APPENDIX
(37 C.F.R. § 41.37(c)(1)(viii))

1. A method for communicating information in a distributed network, the method comprising:

automatically and without user intervention, initiating detection and detecting whether one or more of new media, data and/or service becomes newly available within the distributed network;

migrating said newly available one or more of new media, data and/or service to at least a first media processing system within the distributed media network; and

storing said migrated newly available one or more of new media, data and/or service at said at least a first media processing system.

2. The method according to claim 1, comprising determining whether said stored migrated newly available one or more of new media, data and/or service should be processed.

3. The method according to claim 2, comprising if said stored migrated newly available one or more of new media, data and/or service is to be processed, migrating said stored migrated newly available one or more of new media, data and/or service into one or both of a media view and/or a channel view.

4. The method according to claim 3, wherein said one or both of a media view and/or a channel view is associated with said first media processing system.

5. The method according to claim 3, comprising determining whether to push said migrated newly available one or more of new media, data and/or service to one or both of a second media processing system and/or a personal computer coupled to the media exchange network.

6. The method according to claim 5, comprising if said migrated newly available one or more of new media, data and/or service is to be pushed, migrating said newly available one or more of new media, data and/or service to said one or both of said second media processing system and/or a personal computer coupled to the media exchange network.

7. The method according to claim 1, comprising automatically migrating said newly available one or more of new media, data and/or service to at least a first media processing system within the distributed media network.

8. The method according to claim 1, comprising scheduling said migration of said newly available one or more of new media, data and/or service to one or both of said first media processing system and/or a second media processing system within the distributed media network.

9. The method according to claim 8, comprising indicating said migration of said newly available one or more of new media, data and/or service to one or both of said first media processing system and/or a second media processing system within the distributed media network.

10. The method according to claim 1, comprising archiving said stored newly available one or more of new media, data and/or service.

11. A machine-readable storage having stored thereon, a computer program having at least one code section for communicating information in a distributed media network, the at least one code section being executable by a machine for causing the machine to perform steps comprising:

automatically and without user intervention, initiating detection and detecting whether one or more of new media, data and/or service becomes newly available within the distributed network;

migrating said newly available one or more of new media, data and/or service to at least a first media processing system within the distributed media network; and

storing said migrated newly available one or more of new media, data and/or service at said at least a first media processing system.

12. The machine-readable storage according to claim 11, comprising code for determining whether said stored migrated newly available one or more of new media, data and/or service should be processed.

13. The machine-readable storage according to claim 12, comprising code for migrating said stored migrated newly available one or more of new media, data and/or service into one or both of a media view and/or a channel view, if said stored migrated newly available one or more of new media, data and/or service is to be processed.

14. The machine-readable storage according to claim 13, wherein said one or both of a media view and/or a channel view is associated with said first media processing system.

15. The machine-readable storage according to claim 13, comprising code for determining whether to push said migrated newly available one or more of new media, data and/or service to one or both of a second media processing system and/or a personal computer coupled to the media exchange network.

16. The machine-readable storage according to claim 15, comprising code for migrating said newly available one or more of new media, data and/or service to said one or both of said second media processing system and/or a personal computer

coupled to the media exchange network, if said migrated newly available one or more of new media, data and/or service is to be pushed.

17. The machine-readable storage according to claim 11, comprising code for automatically migrating said newly available one or more of new media, data and/or service to at least a first media processing system within the distributed media network.

18. The machine-readable storage according to claim 11, comprising code for scheduling said migration of said newly available one or more of new media, data and/or service to one or both of said first media processing system and/or a second media processing system within the distributed media network.

19. The machine-readable storage according to claim 18, comprising code for indicating said migration of said newly available one or more of new media, data and/or service to one or both of said first media processing system and/or a second media processing system within the distributed media network.

20. The machine-readable storage according to claim 19, comprising code for archiving said stored newly available one or more of new media, data and/or service.

21. A system for communicating information in a distributed media network, the system comprising:

at least one processor that is operable to, automatically and without user intervention, initiate detection and detect whether one or more of new media, data and/or service becomes newly available within the distributed network;

said at least one processor is operable to migrate said newly available one or more of new media, data and/or service to at least a first media processing system within the distributed media network; and

a local storage operable to store said migrated newly available one or more of new media, data and/or service at said at least a first media processing system.

22. The system according to claim 21, wherein said at least one processor is operable to determine whether said stored migrated newly available one or more of new media, data and/or service should be processed.

23. The system according to claim 22, wherein said at least one processor is operable to migrate said stored migrated newly available one or more of new media, data and/or service into one or both of a media view and/or a channel view, if said stored migrated newly available one or more of new media, data and/or service is to be processed.

24. The system according to claim 23, wherein said one or both of a media view and/or a channel view is associated with said first media processing system.

25. The system according to claim 23, wherein said at least one processor is operable to determine whether to push said migrated newly available one or more of new media, data and/or service to one or both of a second media processing system and/or a personal computer coupled to the media exchange network.

26. The system according to claim 25, wherein said at least one processor is operable to migrate said newly available one or more of new media, data and/or service to said one or both of said second media processing system and/or a personal computer coupled to the media exchange network, if said migrated newly available one or more of new media, data and/or service is to be pushed.

27. The system according to claim 21, wherein said at least one processor is operable to automatically migrate said newly available one or more of new media, data and/or service to at least a first media processing system within the distributed media network.

28. The system according to claim 21, wherein said at least one processor is operable to schedule said migration of said newly available one or more of new media, data and/or service to one or both of said first media processing system and/or a second media processing system within the distributed media network.

29. The system according to claim 28, wherein said at least one processor is operable to indicate said migration of said newly available one or more of new media, data and/or service to one or both of said first media processing system and/or a second media processing system within the distributed media network.

30. The system according to claim 21, comprising an archival storage for storing said stored newly available one or more of new media, data and/or service.

31. The system according to claim 21, wherein said at least one processor is one or more of a computer processor, media peripheral processor, a media exchange system processor, media processing system processor and/or a storage processor.

32. A system for communicating information in a distributed media network, the system comprising:

at least one processor operable to, automatically and without user intervention, initiate detection and detect whether one or more of new media, data and/or service becomes newly available within the distributed network;

said at least one processor is operable to migrate said newly available one or more of new media, data and/or service to at least a first media processing system within the distributed media network; and

said at least one processor is operable to cause storage of said migrated newly available one or more of new media, data and/or service in a local storage associated with said at least a first media processing system.

33. The system according to claim 32, wherein said at least one processor is operable to determine whether said stored migrated newly available one or more of new media, data and/or service should be processed.

34. The system according to claim 33, wherein said at least one processor is operable to migrate said stored migrated newly available one or more of new media, data and/or service into one or both of a media view and/or a channel view, if said stored migrated newly available one or more of new media, data and/or service is to be processed.

35. The system according to claim 34, wherein said one or both of a media view and/or a channel view is associated with said first media processing system.

36. The system according to claim 34, wherein said at least one processor is operable to determine whether to push said migrated newly available one or more of new media, data and/or service to one or both of a second media processing system and/or a personal computer coupled to the media exchange network.

37. The system according to claim 36, wherein said at least one processor is operable to migrate said newly available one or more of new media, data and/or service to said one or both of said second media processing system and/or a personal computer coupled to the media exchange network, if said migrated newly available one or more of new media, data and/or service is to be pushed.

38. The system according to claim 32, wherein said at least one processor is operable to automatically migrate said newly available one or more of new media, data and/or service to at least a first media processing system within the distributed media network.

39. The system according to claim 32, wherein said at least one processor is operable to schedule said migration of said newly available one or more of new media, data and/or service to one or both of said first media processing system and/or a second media processing system within the distributed media network.

40. The system according to claim 39, wherein said at least one processor is operable to indicate said migration of said newly available one or more of new media, data and/or service to one or both of said first media processing system and/or a second media processing system within the distributed media network.

41. The system according to claim 32, wherein said at least one processor is operable to cause storage of said stored newly available one or more of new media, data and/or service in an archival storage.

42. The system according to claim 32, wherein said at least one processor is one or more of a computer processor, media peripheral processor, a media exchange system processor, media processing system processor and/or a storage processor.

EVIDENCE APPENDIX
(37 C.F.R. § 41.37(c)(1)(ix))

- (1) The Gnutella Protocol Specification v0.4, June 3, 2001, entered into record by the Examiner in the February 21, 2008 Office Action.
- (2) United States Patent Pub. No. 2002/0194309 ("Carter"), entered into record by the Examiner in the February 21, 2008 Office Action.
- (3) United States Patent No. 5,526,358 ("Gregerson"), entered into record by the Examiner in the July 16, 2009 Office Action.

RELATED PROCEEDINGS APPENDIX
(37 C.F.R. § 41.37(c)(1)(x))

The Appellant is unaware of any related appeals or interferences.